



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened in response to an application for dispute resolution made April 15, 2019 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlord did not attend the hearing. The Tenant was given the application for dispute resolution and notice of hearing (the “Materials”) by the Residential Tenancy Branch (the “RTB”) on April 18, 2019 for service on the Landlord. I accept the Tenant’s evidence that the Tenant served the Materials and its evidence package to the Landlord in person at the Landlord’s residence on April 18, 2019 in accordance with Section 89 of the Act. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

On February 21, 2019 the Tenant viewed the rental unit and found it in shambles and uninhabitable as follows: unsafe debris in the yard, holes in the interior walls, exposed and hanging electrical wires, no heat or furnace and the front door would not close. The Landlord agreed to make repairs to these issues before the Tenant moved in and the

Tenant then paid the Landlord a security deposit of \$900.00 for a tenancy start date of March 1, 2019 and with rent of \$1,800.00 payable on the first day of each month.

On March 1, 2019 the Tenant met with the Landlord outside the rental unit and paid the Landlord rent for the first month. The Tenant provides a copy of the receipt and notes that the unit number is different as there are several rental units on the acreage property and the numbers are all mixed up. The Landlord told the Tenant to go ahead and move in as the unit was open. No move-in inspection was conducted as the Landlord told the Tenant that the Landlord would return later that day with a tenancy agreement, the keys to the unit and to carry out the move-in inspection. The Landlord then left. Upon entering the unit, the Tenant discovered that none of the repairs had been done and that the unit was still uninhabitable for her and her 7-year-old daughter. The Tenant immediately called the Landlord and the Landlord agreed to return the rent and security deposit that day. The Tenant states that despite waiting for approximately 4 hours until it was cold and dark, the Landlord did not show up.

On March 2, 2019 at approximately 10:00 a.m. the Tenant again went to the rental unit and sent texts to the Landlord asking for return of the monies paid. The Landlord arrived about a half hour later and when the Tenant asked for the money back the Landlord told the Tenant to leave the property and called the police. The Tenant left the property after the police arrived and the Landlord placed a lock on the gate to the property. The police told the Tenant to pursue the claim with the RTB. Over the next several days the Tenant sent several texts and made several telephone calls leaving voice messages asking for return of the monies. The Landlord never replied.

On March 7, 2019 the Tenant sent her forwarding address to the Landlord by text. The Landlord did not reply. The Tenant claims return of double the security deposit.

The Tenant had no place to stay as the unit was not habitable and had to stay in a hotel for 4 nights. The Tenant claims \$436.20 for the cost of the hotel and provides the

receipt. The Tenant claims return of \$1,800.00 paid for March 2019 rent. The Tenant withdraws the claim for cleaning costs.

Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence of the condition of the rental unit on the date the Tenant was to take possession of the unit I find that the Landlord failed to provide residential property to the Tenant that was suitable for occupation and that the tenancy therefore ended on March 1, 2019. Based on undisputed evidence that the Tenant was left without a residence or shelter and had to stay at a hotel for 4 nights I find that the Tenant has substantiated that the Landlords non-compliance with the Act caused the Tenant to incurred hotel costs. For these reasons and given the receipts for the monies paid, I find that the Tenant has substantiated entitlements to \$1,800.00 and \$436.20 for a total entitlement of **\$2,236.20**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. As the Tenant sent its forward address by text and as there is no evidence of a reply to the text indicating that it had been received by the Landlord, I find that the Tenant has not provided its forwarding address in writing to the Landlord. I therefore dismiss the claim

for return of the security deposit with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,236.20**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: July 19, 2019

Residential Tenancy Branch